

IC 6-2.5-13

Chapter 13. General Sourcing Rules

IC 6-2.5-13-1

Sourcing of retail sales, leases, and rentals

Sec. 1. (a) As used in this section, the terms "receive" and "receipt" mean:

- (1) taking possession of tangible personal property;
- (2) making first use of services; or
- (3) taking possession or making first use of digital goods;

whichever comes first. The terms "receive" and "receipt" do not include possession by a shipping company on behalf of the purchaser.

(b) This section:

- (1) applies regardless of the characterization of a product as tangible personal property, a digital good, or a service;
- (2) applies only to the determination of a seller's obligation to pay or collect and remit a sales or use tax with respect to the seller's retail sale of a product; and
- (3) does not affect the obligation of a purchaser or lessee to remit tax on the use of the product to the taxing jurisdictions of that use.

(c) This section does not apply to sales or use taxes levied on the following:

- (1) The retail sale or transfer of watercraft, modular homes, manufactured homes, or mobile homes. These items must be sourced according to the requirements of this article.
- (2) The retail sale, excluding lease or rental, of motor vehicles, trailers, semitrailers, or aircraft that do not qualify as transportation equipment, as defined in subsection (g). The retail sale of these items shall be sourced according to the requirements of this article, and the lease or rental of these items must be sourced according to subsection (f).
- (3) Telecommunications services, ancillary services, and Internet access service shall be sourced in accordance with IC 6-2.5-12.
- (4) Direct mail, which shall be sourced in accordance with section 3 of this chapter.

(d) The retail sale, excluding lease or rental, of a product shall be sourced as follows:

- (1) When the product is received by the purchaser at a business location of the seller, the sale is sourced to that business location.
- (2) When the product is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser (or the purchaser's donee, designated as such by the purchaser) occurs, including the location indicated by instructions for delivery to the purchaser (or donee), known to the seller.
- (3) When subdivisions (1) and (2) do not apply, the sale is

sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith.

(4) When subdivisions (1), (2), and (3) do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith.

(5) When none of the previous rules of subdivision (1), (2), (3), or (4) apply, including the circumstance in which the seller is without sufficient information to apply the previous rules, then the location will be determined by the address from which tangible personal property was shipped, from which the digital good or the computer software delivered electronically was first available for transmission by the seller, or from which the service was provided (disregarding for these purposes any location that merely provided the digital transfer of the product sold).

(e) The lease or rental of tangible personal property, other than property identified in subsection (f) or (g), shall be sourced as follows:

(1) For a lease or rental that requires recurring periodic payments, the first periodic payment is sourced the same as a retail sale in accordance with the provisions of subsection (d). Periodic payments made subsequent to the first payment are sourced to the primary property location for each period covered by the payment. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The property location shall not be altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls.

(2) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subsection (d).

This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or an accelerated basis, or on the acquisition of property for lease.

(f) The lease or rental of motor vehicles, trailers, semitrailers, or aircraft that do not qualify as transportation equipment, as defined in subsection (g), shall be sourced as follows:

(1) For a lease or rental that requires recurring periodic payments, each periodic payment is sourced to the primary property location. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the

ordinary course of business, when use of this address does not constitute bad faith. This location shall not be altered by intermittent use at different locations.

(2) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subsection (d).

This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

(g) The retail sale, including lease or rental, of transportation equipment shall be sourced the same as a retail sale in accordance with the provisions of subsection (d), notwithstanding the exclusion of lease or rental in subsection (d). As used in this subsection, "transportation equipment" means any of the following:

(1) Locomotives and railcars that are used for the carriage of persons or property in interstate commerce.

(2) Trucks and truck-tractors with a gross vehicle weight rating (GVWR) of ten thousand one (10,001) pounds or greater, trailers, semitrailers, or passenger buses that are:

(A) registered through the International Registration Plan; and

(B) operated under authority of a carrier authorized and certificated by the U.S. Department of Transportation or another federal authority to engage in the carriage of persons or property in interstate commerce.

(3) Aircraft that are operated by air carriers authorized and certificated by the U.S. Department of Transportation or another federal or a foreign authority to engage in the carriage of persons or property in interstate or foreign commerce.

(4) Containers designed for use on and component parts attached or secured on the items set forth in subdivisions (1) through (3).

(h) Notwithstanding subsection (d), a retail sale of floral products in which a florist or floral business:

(1) takes a floral order from a purchaser; and

(2) transmits the floral order by telegraph, telephone, or other means of communication to another florist or floral business for delivery;

is sourced to the location of the florist or floral business that originally takes the floral order from the purchaser.

As added by P.L.257-2003, SEC.32. Amended by P.L.153-2006, SEC.6; P.L.145-2007, SEC.15; P.L.19-2008, SEC.7; P.L.182-2009(ss), SEC.185; P.L.265-2013, SEC.7.

IC 6-2.5-13-2

Repealed

(Repealed by P.L.145-2007, SEC.16.)

IC 6-2.5-13-3

Sourcing of purchases of direct mail

Sec. 3. (a) Notwithstanding section 1 of this chapter, a purchaser of advertising and promotional direct mail that is not a holder of a direct pay permit may provide to the seller in conjunction with the purchase:

- (1) a direct mail form;
- (2) a certificate of exemption claiming "direct mail" (or another written statement approved, authorized, or accepted by the department); or
- (3) information to show the jurisdictions to which the advertising and promotional direct mail is delivered to recipients.

(b) If the purchaser provides the direct mail form referred to in subsection (a)(1), or a certificate or statement referred to in subsection (a)(2), in the absence of bad faith, the seller is relieved of all obligations to collect, pay, or remit the applicable tax on any transaction involving advertising and promotional direct mail to which the direct mail form, certificate, or statement applies. The purchaser shall source the sale to the jurisdictions to which the advertising and promotional direct mail is to be delivered to the recipients and is obligated to pay or remit the applicable tax on a direct pay basis.

(c) If the purchaser provides the information referred to in subsection (a)(3) showing the jurisdictions to which the advertising and promotional direct mail is delivered to recipients, the seller shall source the sale to the jurisdictions to which the advertising and promotional direct mail is to be delivered and collect the tax according to the delivery information provided by the purchaser. In the absence of bad faith, the seller is relieved of any further obligation to collect tax on any transaction where the seller has sourced the sale and collected tax under the delivery information provided by the purchaser.

(d) If the purchaser of advertising and promotional direct mail does not have a direct pay permit and does not provide the seller with either a direct mail form referred to in subsection (a)(1), a certificate or statement referred to in subsection (a)(2), or delivery information referred to in subsection (a)(3), the sale shall be sourced and the seller shall collect the tax according to section 1(d)(5) of this chapter. Nothing in this subsection limits a purchaser's obligation for sales or use tax to any state to which the advertising and promotional direct mail is delivered. The state to which the advertising and promotional direct mail is delivered may disallow a credit for tax paid to this state on sales sourced under this subsection.

(e) Except as provided in this section, sales of other direct mail are sourced in accordance with section 1(d)(3) of this chapter. A purchaser of other direct mail may provide the seller with either:

- (1) a direct mail form; or
- (2) a certificate of exemption claiming "direct mail" (or another written statement approved, authorized, or accepted by the department).

(f) If the purchaser provides the direct mail form referred to in

subsection (e)(1) or a certificate or statement referred to in subsection (e)(2), the seller, in the absence of bad faith, is relieved of all obligations to collect, pay, or remit any tax on any transaction involving other direct mail to which the direct mail form, certificate, or statement applies. Notwithstanding subsection (e), such a sale shall be sourced to the jurisdictions to which the other direct mail is to be delivered to the recipients, and the purchaser shall report and pay the applicable tax due.

(g) If a purchaser of direct mail provides the seller with documentation of direct pay authority, the purchaser shall not be required to provide a direct mail form, a certificate or statement, or delivery information to the seller.

(h) A direct mail form remains in effect for all future sales of direct mail by the seller to the purchaser until it is revoked in writing.

(i) This section applies to a transaction characterized as the sale of services only if the service is an integral part of the production and distribution of printed material that is direct mail.

(j) This section does not apply to any transaction that includes the development of billing information or the provision of any data processing service that is more than incidental, regardless of whether advertising and promotional direct mail is included in the same mailing.

As added by P.L.257-2003, SEC.32. Amended by P.L.265-2013, SEC.8.